

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**IN THE MATTER OF THE PETITION OF NUI UTILITIES, INC.
(d/b/a ELIZABETHTOWN GAS COMPANY) AND AGL RESOURCES
INC. FOR APPROVAL UNDER N.J.S.A. 48:2-51.1 AND N.J.S.A. 48:3-10
OF A CHANGE IN OWNERSHIP AND CONTROL**

BPU DOCKET No. GM0407_____

JULY 30, 2004

TESTIMONY OF

CRAIG G. MATTHEWS

ON BEHALF OF

**NUI UTILITIES, INC.
AND
AGL RESOURCES INC.**

1 **Q. Please state your name and position.**

2 A. My name is Craig G. Matthews, and I am President and Chief Executive Officer
3 of NUI Corporation (NUI), the parent company of NUI Utilities, doing business
4 in New Jersey as Elizabethtown Gas Company (ETG).

5
6 **Q. What is the purpose of your testimony?**

7 A. The purpose of my testimony is to provide a brief description of the current
8 business, financial, and regulatory status of NUI and ETG, in order to support the
9 application of ETG and AGL Resources Inc. (AGLR) for approval of the change
10 in control of ETG.

11

12 **Q. Please describe your work history with NUI.**

13 A. As I will discuss in more detail as I describe the current status of NUI and ETG, I
14 joined NUI in February, 2004, in my current position. I was specifically charged
15 with undertaking the sale of NUI, in accordance with the Board of Directors'
16 earlier decision to sell NUI and consistent with ongoing discussions with the New
17 Jersey Board of Public Utilities (NJBPU).

18

19 **Q. Please provide a brief summary of NUI's current regulatory status.**

20 A. On March 20, 2003 the NJBPU directed the initiation of a focused audit of NUI
21 Corporation, its direct subsidiary NUI Utilities and ETG, the local distribution
22 company operating in New Jersey. ETG is a division of NUI Utilities. The
23 NJBPU initiated the focused audit because of credit downgrades of the senior

1 unsecured debt of NUI and NUI Utilities, as well as concerns raised during the
2 NJBPU's competitive services audit of ETG, which substantiated the need for an
3 in-depth review of the financial practices of NUI and its affiliates. The NJBPU
4 hired Liberty Consulting Inc. (Liberty) to conduct the audit.

5
6 The final Liberty Audit Report (Report) was issued by the NJBPU on March 17,
7 2004. The Report details Liberty's conclusions regarding the deficiencies and
8 omissions that led to NUI and its utilities' financial troubles and eventual credit
9 downgrades. As a result of the conclusions noted in the Report, the NJBPU
10 ordered, among other things, that ETG discontinue its relationship with NUI
11 Energy Brokers (NUI EB). NUI, NUI Utilities and the NJBPU signed a
12 Stipulation and Settlement, dated April 14, 2004, settling the matters identified by
13 the Liberty Audit. On April 26, 2004, the NJBPU issued a Final Order accepting
14 and adopting that Settlement Agreement.

15
16 **Q. Please summarize the terms of that Final Order.**

17 A. Pursuant to the Settlement Agreement and the Final Order, NUI Utilities agreed to
18 refund \$28 million plus interest to ETG ratepayers and to pay a \$2 million penalty
19 to the State of New Jersey. The Final Order provides that the balance of the
20 refund and penalties will become due after the closing of any proposed sale of
21 NUI. The Settlement Agreement provides that it is a final settlement of the issues
22 addressed in the Liberty Audit.

23

1 **Q. Have there been other New Jersey state government proceedings against**
2 **NUI?**

3 A. Yes. In November, 2003, the New Jersey Attorney General's Office (NJAGO)
4 subpoenaed NUI for certain documents and information related to the practices of
5 NUI EB. On June 29, 2004, NUI EB entered into an agreement with the NJAGO
6 whereby NUI EB pled guilty to a charge of Misconduct by a Corporate Official in
7 the third degree. This plea agreement provides that NUI EB must pay a \$500,000
8 fine and must cooperate fully with the NJAGO continuing investigation. NUI is a
9 party to a separate agreement related to NUI EB's plea, but it did not plead guilty
10 to any crimes. NUI guaranteed NUI EB's payment of the fine and agreed to
11 cooperate fully with the NJAGO continuing investigation and to develop and fund
12 community service programs within the ETG service territory.

13
14 **Q. Please describe the operations of ETG.**

15 A. ETG is headquartered in Union, New Jersey, and serves portions of seven
16 counties in central and northwestern New Jersey. ETG's service territories cover
17 approximately 1,300 square miles and a total population of approximately 1.1
18 million. ETG has approximately 265,000 customers, representing approximately
19 70% of NUI Utilities' total customers.

20
21 **Q. During this time, what steps were taken to effect a sale of NUI and its**
22 **subsidiaries?**

1 A. In 2003, as a result of the negative impact on NUI resulting from the credit
2 downgrades and adverse business conditions, the NUI Board of Directors
3 established a Special Committee to assess the company's alternatives. After
4 considering a number of strategic alternatives, on September 26, 2003, the Board
5 of Directors of NUI concluded that the sale of the company was in the best
6 interests of its shareholders and other key stakeholders, including its customers,
7 and announced its intention to pursue the sale of the company. Thereafter, NUI
8 began a public auction process. As I have noted above, I joined NUI in February
9 of 2004 and was directed to complete the sale of the company.

10

11 **Q. Please provide a brief description of the auction process used by NUI.**

12 A. Once the decision to pursue a sale was made, the NUI Board of Directors engaged
13 Credit Suisse First Boston LLC and Berenson & Company to act as its financial
14 advisors through the sale process. A detailed Confidential Information
15 Memorandum was prepared during November, 2003, and initial expressions of
16 interest from potential purchasers were sought in December, 2003.

17 Approximately 60 interested parties, both strategic and financial entities, were
18 contacted and approximately half of those parties submitted written expressions of
19 interest. Eight parties were invited into the second round of the sale process.

20 Detailed due diligence was conducted by prospective bidders during the first
21 several months of 2004, and binding bids were submitted on June 2, 2004.

22 Detailed negotiations were conducted with bidders, and AGLR was ultimately the
23 winning bidder in the auction. The final sales price was negotiated by the parties.

1 A final sales agreement was reached between NUI and AGLR on July 14, 2004,
2 which agreement is Exhibit A to the Petition filed in this matter.

3

4 **Q. Why is AGLR an attractive acquisition partner for NUI?**

5 A. There are a number of factors that make AGLR a good fit as an acquisition
6 partner for NUI. First, as an investment-grade company, AGLR brings financial
7 strength and resources. In 2003, AGLR had an enterprise value of \$3 billion and
8 total operating revenues of almost \$1 billion. Mr. O'Brien will talk in greater
9 detail about AGLR's plans for strengthening NUI's and ETG's financial structures,
10 and returning the related financing costs to those of an investment grade utility.
11 Second, like NUI, AGLR has been operating natural gas local distribution
12 systems for almost 150 years and will continue to focus on this business. AGLR
13 owns local distribution companies in Georgia, Tennessee and Virginia, and has a
14 strong track record of well-run utility operations. NUI has weathered some
15 significant storms in the last year, but our utility operations, including ETG, are
16 sound. With AGLR's stronger balance sheet, its experience in operating larger
17 gas distribution franchises and its commitment to technology, we expect AGLR to
18 continue to provide, and even in the short-run improve, quality service to our
19 customers. In fact, with investments in infrastructure and state-of-the-art
20 technology that AGLR has in place or is in the process of developing, we expect
21 the quality of our customer service to be further enhanced over time. Third,
22 AGLR maintains a strong commitment to its employees. As part of a much larger
23 organization, employees will have additional opportunities for training and

1 advancement. AGLR also has an outstanding record of involvement in the
2 communities it serves. It plans to increase the level of community involvement of
3 ETG, through an effort to increase the volunteer base and interests of our
4 employees. Lastly, AGLR has strong, collaborative and ongoing relationships
5 with regulators. This philosophy will be important to NUI as it moves beyond
6 recent events.

7

8 **Q. What do you view as the most significant benefits to ETG customers as a**
9 **result of the acquisition?**

10 A. Perhaps the most significant benefit is assured stability primarily as a result of
11 AGLR's financial strength and its ability to support ETG's customer growth and
12 related capital requirements as well as the significant working capital necessary to
13 purchase and deliver natural gas at today's higher commodity prices. As the
14 Board is aware, being part of an investment grade company will, in the short-run,
15 significantly reduce the interest rate at which NUI Utilities currently borrows and
16 will also allow NUI Utilities access to capital in the future at attractive prices,
17 clearly a benefit to customers in the long run. In addition, AGLR has a strong
18 commitment to customer service and quality utility operations, and is willing to
19 invest in the ETG information systems to improve customer service and
20 operations.

21

22 **Q. Why is it important that regulatory approval of the change of control take**
23 **place on an expedited basis?**

1 A. NUI is a natural gas company, and as such the winter heating season is always a
2 challenging period for us. The nature of our core business combined with rising
3 natural gas prices and our current financial situation will make this upcoming
4 heating season particularly challenging. While these may be the dog days of
5 summer, winter is fast approaching and we need to position ourselves to continue
6 to provide quality service to our customers. Because of our weakened credit
7 ratings we are required to prepay gas commodity and demand charges. This is at
8 significant cost. In addition, we are incurring significant bank fees and high
9 interest rates because of our poor credit ratings. To insure that we have sufficient
10 cash to cover all contingencies, we have obtained additional financing which is
11 the subject of a second proceeding currently pending before the NJBPU. Since
12 some of these higher financing costs are being paid by ETG, but are primarily
13 being paid by NUI, additional stress is impacting the cash flow of the parent
14 company. These financing costs will be dramatically reduced as a result of
15 AGLR's plans to restructure the company's financings. But, as mentioned above,
16 that financing is at a cost which is significantly higher than AGLR's financing
17 costs. Approving this transaction on an expedited basis would save that
18 additional expense.

19
20 **Q. Are there any other factors that influenced NUI's decision to request**
21 **expedited regulatory review?**

22 A. An acquisition transaction inevitably involves changes. In my prior position at
23 KeySpan Energy I was involved in two significant acquisitions, so I have first

1 hand experience with the challenge of integrating companies. One of the most
2 significant issues is employee retention during the acquisition approval process.
3 It is important to customers that experienced, qualified employees remain with the
4 company through the approval process. NUI and AGLR want to minimize
5 employee attrition during the coming months, and that is one more reason we are
6 seeking a prompt review of the proposed acquisition. Additionally, the positive
7 aspects of the acquisition I discussed previously cannot begin or be provided until
8 the acquisition is approved.

9

10 **Q. Does this conclude your testimony?**

11 A. Yes.